

October 9, 2007

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Glen Bowers

Dates of Filing: August 21, 2007
September 7, 2007

Case Numbers: TFA-0222
TFA-0223

On August 21, 2007, Glen Bowers filed an appeal from a determination issued to him on May 29, 2007 and July 18, 2007 by the National Nuclear Security Administration (NNSA) Service Center and the Department of Energy's (DOE) Office of Health, Safety and Security (HSS), respectively. In addition, on September 7, 2007, Mr. Bowers filed an appeal from a determination that DOE's Oak Ridge Operations Office (ORO) issued on July 25, 2007.¹ In those determinations, NNSA, HSS and ORO responded to a request for documents Mr. Bowers submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. Both NNSA and HSS determined that they did not locate any documents responsive to Mr. Bowers' request. ORO located and released some documents responsive to Mr. Bowers' request. These appeals, if granted, would require NNSA, HSS and ORO to perform additional searches and either release any newly discovered responsive documents or issue new determinations justifying the withholding of any portions of those documents.

I. Background

Mr. Bowers filed a FOIA request for the employment records of his deceased father, Mr. John Wyley Bowers, who was employed with the Atomic Energy Commission from 1951 until 1970. *See* Letter from Glen Bowers to Freedom of Information Act Officer, DOE (April 12, 2007).² Mr. Bowers requested that the information include his father's "Q"

¹ Mr. Bowers' appeals have been consolidated for the purpose of this decision.

² In his request, Mr. Bowers also states that his father was employed during the same time period by Department of Defense union contractors throughout the United States of America. *See* Letter from Glen Bowers to Freedom of Information Act Officer, DOE (April 12, 2007). Since Mr. Bowers identified the

clearance number, location of job sites where he worked, names of the top secret and non-secret projects in which he was involved, job titles and duties, awards, written documents, photographs, news letters and all information pertaining to his father that he could receive under the Freedom of Information Act. *Id.* In a telephone conversation with the DOE Freedom of Information/Privacy Act Group (DOE/FOI), Mr. Bowers indicated that his father had worked at the Paducah, Kentucky and Portsmouth, Ohio sites and at the Los Alamos National Laboratory (LANL). *See* Facsimile of original request received from DOE/FOI. DOE/FOI forwarded the request to the following three offices it believed might have responsive documents: HSS, NNSA, and ORO.

In its determination letter, DOE/FOI determined HSS conducted a reasonable search and did not locate any records responsive to Mr. Bowers' request. *See* Letter from Abel Lopez, DOE/FOI, to Glen Bowers (July 18, 2007) (HQ Determination Letter). Additionally, NNSA determined it did not locate any records responsive to his request. *See* Letter from Carolyn Becknell, NNSA, to Glen Bowers (May 29, 2007) (NNSA Determination Letter). However, ORO was able to locate responsive documents. ORO provided Mr. Bowers with index cards that show that his father held security clearances for those time frames in which he was employed by subcontractors at DOE's Portsmouth, Ohio facility. *See* Letter from Amy Rothrock, ORO, to Glen Bowers (July 25, 2007) (ORO Determination Letter).

In his appeals, Mr. Bowers stated that he had documentation indicating that his father worked at the Portsmouth Gaseous Diffusion Plant in 1954, 1955 and 1963 as an employee of Grinnell Corporation, located in Portsmouth, OH, and C & I Girdler Construction Co., located in Cincinnati, OH. *See* Letter from Glen Bowers to OHA (received September 7, 2007) (ORO Appeal Letter). Mr. Bowers further stated that his father worked for the Atomic Energy Commission from 1951 until 1970. *Id.* Mr. Bowers challenges the adequacy of the search for responsive documents, performed by HSS, NNSA and ORO. *See* Letter from Glen Bowers to OHA (received August 21, 2007) (HSS/NNSA Appeal Letter). *See also* ORO Appeal Letter.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand

Department of Defense (DOD) as a potential employer for his father, NNSA referred him to the FOIA officer at DOD. *See* NNSA Determination Letter. We suggest that Mr. Bowers contact the DOD FOIA officer to make a proper FOIA request with that department regarding his father's employment records, if he has not yet done so.

a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002) (Case No. VFA-0760).³

In reviewing these appeals, we contacted HSS to ascertain the scope of its search for responsive documents. HSS informed us that it performed a search and identified no records responsive to Mr. Bowers' request. HSS conducted an electronic search of indices for access authorizations using Mr. Bowers' father's name and social security number. *See* Memorandum of Privacy Act Request from Stephanie Scott Grimes, HSS to Abel Lopez, DOE/FOI (June 28, 2007). According to HSS, the absence of a record for Mr. Bowers' father may mean that he worked for the DOE or a DOE predecessor or contractor in a position that did not require an access authorization. *Id.*

We next contacted NNSA to ascertain the scope of its search for responsive documents. According to NNSA, the employment records database and medical records at LANL were searched for responsive documents and no records responsive to Mr. Bowers' request were identified. *See* Memorandum of Freedom of Information Act Request from Office of Counsel to Carolyn Becknell, NNSA (May 22, 2007). The electronic, microfiche and paper searches were performed using Mr. Bowers' father's name and social security number. *Id.*

Finally, we contacted ORO to ascertain the scope of its search for responsive documents. ORO performed a search for records and located some documents responsive to Mr. Bowers' request. *See* ORO Determination Letter. ORO informed us that it performed both electronic and paper searches of finding aids, databases and document collections at each of its sites in Portsmouth, K-25, Oak Ridge Associated Universities, and the DOE Records Holding Area (RHA). *Id.* The search was performed using Mr. Bowers' father's name, social security number and date of birth. Using this information, no records could be located at any site except the RHA. *Id.*

ORO provided Mr. Bowers with copies of index cards from the RHA that show that his father held security clearances at Portsmouth for subcontractors Grinnell, FH McGraw, Kellogg and Peter Kiewet, which were confirmed subcontractors at Portsmouth. However, because subcontractors took their records with them when they left Portsmouth, no additional personnel, medical and similar files could be located where the searches were conducted. Finally, ORO did not search Oak Ridge National Laboratory, since his father did not work there and it is thus not likely that his employment records would exist there.

Based on the foregoing information, we find that HSS, NNSA and ORO performed searches reasonably calculated to reveal documents responsive to Mr. Bowers' request. Accordingly, the searches were adequate and, therefore, Mr. Bowers' appeals should be denied.

³ All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.

In the course of processing these appeals, Mr. Bowers sent us additional information regarding his father's employment record. It appears that Mr. Bowers' father may have been employed by contractors at various DOE sites. We are forwarding this new information to DOE/FOI to determine if a new search should be conducted.

It Is Therefore Ordered That:

- (1) The Appeal filed on August 21, 2007 by Glen Bowers, OHA Case No. TFA-0222, is hereby denied.
- (2) The Appeal filed on September 7, 2007 by Glen Bowers, OHA Case No. TFA-0223, is hereby denied.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. §552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
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Office of Hearings and Appeals

Date: October 9, 2007